

(d) **ROGER KIMPLAND**

205. Mr. Kimpland is a 25-year resident of the Reading area who has been employed for 20 years as a Media Coordinator at the Reading Area Community College. Adams Exh. 47, p. 5. During the license term, Mr. Kimpland did not watch Station WTVE(TV) because "[t]here was nothing of interest at that point." *Id.*, pp. 8-9. He was shown information about a number of Station WTVE(TV) PSA's concerning events or programs at local educational institutions, but he was not familiar with any of those PSA's, even though he was familiar with at least some of the underlying events or programs. *Id.*, p. 11-20.

(e) **DAVID BALDINGER**

206. Mr. Baldinger is a former employee of Station WTVE(TV) and a long-time resident of the Reading area. Adams Exh. 48, pp. 4-5. During his tenure as Operation Manager of Station WTVE(TV) from approximately January, 1980-June, 1982, he was "responsible for anything that went on the air" on Station WTVE(TV). *Id.*, p. 6. During that time, the station broadcast regularly scheduled local news programs which included coverage of City Council meeting, County Commissioner meetings, local elections and local criminal enforcement activities. *Id.*, pp. 7-8. However, to Mr. Baldinger's knowledge, Station WTVE(TV) did not provide any local news coverage of Reading or Berks County during the license term. *Id.*, p. 10.

207. Mr. Baldinger was shown a list of other media available in the Reading area and asked whether any of the media listed were "sources of news which is of particularly local interest to Reading". *Id.*, p. 14. Mr. Baldinger answered in the negative, pointing

out that many of the listed media were in what he considered to be the Philadelphia market, and he considered "their news not to be of interest to residents of Berks County."

Id. ^{43/}

(5) **VIOLATIONS OF THE COMMISSION'S RULES AND THE COMMUNICATIONS ACT**

(a) ***REPORTING FAILURES***

208. RBI acknowledges that it failed on numerous occasions to comply with the Commission's requirements concerning the Commission's requirement to accurately report officers, directors, shareholders and certain agreements. RBI Exh. 14; Tr. 624-628, 814-815.

(a1) ***Management Services Agreement***

209. On or about May 28, 1989, RBI entered into a Management Services Agreement ("MSA") with Partel. Under this agreement, Partel acquired the right to a significant percentage ownership interest in RBI. RBI Exh. 18, pp. 6-17; Tr. 626. Hence, this MSA was in effect at all times during the license term. The document was not reported to or filed with the Commission within 30 days of its initial execution, nor within a period substantially in excess of one year of execution. RBI Exh. 14. Mr. Parker testified that the MSA was a "work in progress" between its initial execution and the

^{43/} As noted above, Mr. Baldinger did testify that, when Station WTVE(TV) broadcast regularly-scheduled local news, at least one other station sought to compete by sending its own crews into the Reading area to cover local news. See Paragraph 124, above. However, that competitive local coverage ceased when Station WTVE(TV) terminated its own local coverage. *Id.*

approval of the MSA by the bankruptcy court on August 28, 1990. Tr. 625-626. But even after the bankruptcy court approved the MSA, RBI failed to advise the Commission of the existence of the MSA for approximately 18 months, and when it did finally mention the MSA to the Commission, the reference was extraordinarily oblique. RBI Exh. 14.

210. During the entire license term the only reference to the MSA which was submitted to the Commission appeared in an "Order Confirming Debtor's Fourth Amended Plan of Reorganization" issued by the bankruptcy court in January, 1991, a copy of which was filed with the Commission by RBI in February, 1992. RBI Exh. 14. A copy of RBI's submission to the Commission appears in the record as Adams Exh. 30. That submission consists of a two-page transmittal letter to the Commission from RBI's counsel, accompanied by a one-sentence amendment to RBI's then-pending long-form (FCC Form 315) application for consent to the transfer of control of RBI. That amendment, which was signed by Mr. Parker, read in its entirety:

The application of Reading Broadcasting, Inc. as debtor-in-possession, for consent to the transfer of control of WTVE(TV), Reading, Pennsylvania, to Reading Broadcasting, Inc., FCC File No. BTCCT-911113KH, is hereby amended to include the attached material.

Adams Exh. 30, p. 3. Plainly, that amendment contained no reference to the MSA, and did not direct the Commission's attention to any reference to the MSA in the material which followed.

211. That material consists of a six-page Order from the bankruptcy court. The *only* reference to the MSA in that Order appeared on the next-to-last page of the Order in a passing reference to "the Partel Consulting Contract (the contract of employment by and between Partel, Inc. and the Debtor which was approved by Order of this Court." Adams

Exh. 30, p. 8. The February, 1992 "reference" to the MSA which RBI refers to in RBI Exh. 14 thus did not disclose that the MSA provided for the right, by Partel, to acquire a substantial ownership interest in RBI, nor did it disclose that the MSA afforded Partel substantial control over the day-to-day operation of Station WTVE(TV). ^{44/}

(a2) *Officers, Directors and Shareholders*

212. RBI has also conceded that, between October, 1991 and March 31, 1994, it repeatedly misreported to the Commission the identities of RBI's officers and directors. RBI Exh. 14. In particular, inaccurate reports were included in RBI's November, 1991 long-form transfer of control application, in its April, 1992 ownership report, and in its April, 1993 ownership certification. *Id.* Mr. Parker, who signed all of the inaccurate reports in question, claimed that those inaccuracies were simply the result of "inadvertence". Tr. 815. However, the circumstances surrounding the election of the officers and directors and the issuance of the stock in question raise serious doubts about the validity of that claim. *See* Paragraphs 218-243, below.

213. Additionally, the record establishes that RBI's November, 1991 long-form

^{44/} Pursuant to the MSA, Mr. Parker was to be elected Chief Operating Officer of RBI, and Partel (and Parker) were to operate Station WTVE(TV). RBI Exh. 18, p. 8. He was elected a director of RBI in August, 1989, at a meeting in which the MSA was approved by RBI's shareholders. Adams Exh. 13, pp.3-4. The MSA also provided that Mr. Parker would have "the authority to make personnel decisions". *Id.* Moreover, while the MSA did not accord Parker/Partel authority to sign corporate checks, it gave Parker/Partel control over RBI's finances: according to the Partel Agreement, RBI "shall not write checks or incur liabilities without Parker's prior approval." *Id.* Mr. Parker himself referred to this as a "veto power over any expenditures made by the Corporation." RBI Opposition to Motion to Enlarge, filed November 19, 1999, Exhibit Y, p. 3. Even Mr. Linton, a shareholder (and former officer and counsel) of RBI, viewed this provision as giving Partel "a veto power over expenditures." *Id.*, Exhibit X, p. 86.

transfer of control application indicated that RBI stock had not as of that date been distributed to certain individuals and entities who had, in fact, received their stock less than one month prior to the filing of the application. See Paragraphs 225-237, below.

(a3) *Telemundo Option Agreement*

214. In May, 1998, RBI entered into a Network Affiliation Agreement ("Telemundo Affiliation Agreement") with Telemundo Network, Inc. RBI Exh. 11 (unpaginated exhibit - accompanies RBI Ownership Report dated March 31, 1999). Section 10(b) of that Agreement provided

. . . Telemundo shall have the right (the "Option"), in its sole discretion, exercisable upon sixty (60) days written notice to [RBI] (the "Option Notice Date"), to purchase all interests in [RBI] or substantially all of the assests [sic] of [RBI] for a purchase price equal to the greater of (i) \$40 million or (ii) twelve (12) times the broadcast cash flow for the previous twelve (12) month period. Notwithstanding anything in this Section 10(b) to the contrary, the Option shall be of no force or effect until such time as the grant of [RBI]'s license renewal application filed on or about April 1, 1994, with the FCC becomes final, that is, no longer subject to FCC or judicial review.

Id. Unquestionably, Telemundo held an option to acquire ownership of the station.

215. Section 73.3613 of the Commission's Rules requires the submission to the Commission of all agreements which, *inter alia*, relate to the present or future ownership of a broadcast license. Section 73.3613(b)(3)(iii) specifically includes options as agreements required to be submitted. The introductory paragraph of Section 73.3613 requires that all agreements subject to that section be filed "within 30 days of execution thereof."

216. The Telemundo Affiliation Agreement was not submitted to the Commission

until April, 1999, almost a year after it was executed. RBI knew of the requirement that option agreements be filed. By letter dated March 26, 1999, to Ann Gaulke, an official of Telemundo, Mr. McCracken specifically stated that awareness. According to Mr. McCracken's letter,

Because I never believed that Section 10(b) [of the Telemundo Affiliation Agreement] constituted an option that Telemundo could exercise at any time whether RBI desired to sell or not, I have not filed the [Telemundo Affiliation Agreement] with our ownership reports as an option affecting ownership.

Adams Exh. 87, p. 2. However, in light of the absolutely unmistakable language of Section 10(b) of the Telemundo Affiliation Agreement, Mr. McCracken's stated justification for his failure to file that agreement as required is incredible.

217. A more likely justification appears elsewhere in Mr. McCracken's letter to Ms. Gaulke. Mr. McCracken observed that

Our communications attorney has pointed out to us that the option set out in Section 10(b) could be construed in a way that could cause RBI considerable comparative disadvantage in the [to-be-designated comparative renewal] hearing, because it may seem that RBI could not be relied upon by the FCC to honor its promises to operate the station during the coming license renewal. . . . Thus, the last thing RBI wants is for the FCC to perceive that it seeks license renewal solely to unload the television station at the direction of an option holder.

Id. at 1. Thus, while Mr. McCracken's stated reason for not filing the Telemundo Affiliation Agreement, *i.e.*, he did not view Section 10(b) to constitute an option, is inherently incredible, Mr. McCracken and RBI obviously had a clear and credible reason for not filing that agreement: they were concerned that the agreement would harm their comparative case.

(b) *UNAUTHORIZED TRANSFER OF CONTROL*

218. An undisclosed and unauthorized transfer of control of RBI occurred in October, 1991.

(b1) *June, 1989-August, 1991 -- Parker arrives at RBI; the MSA is implemented.*

219. As noted above, RBI entered into the MSA in May, 1989. *See* Paragraph 38, above. This was less than a year after Mr. Parker had *twice* been found to have engaged in fraud and/or deceit before the Commission. *Religious Broadcasting Network*, 3 FCC Rcd 4085 (Rev. Bd., July 5, 1988); *Mt. Baker Broadcasting Co., Inc.*, 3 FCC Rcd 4777 (August 5, 1988). ^{45/}

220. The MSA was approved by RBI's shareholders and directors in August-September, 1989. Adams Exh. 13, pp. 3-4. At that time, Parker was elected an officer and director of RBI, and Partel/Parker undertook management and effective control of Station WTVE(TV) pursuant to the MSA. *Id.*

(b2) *The RBI Bankruptcy Plan of Reorganization*

221. RBI had been in bankruptcy since 1986. In 1990, RBI submitted a plan of reorganization to the Bankruptcy Court. That plan was approved, or "confirmed", by the Court on January 10, 1991. The Court's confirmation order became final and nonappealable on January 20, 1991. *See* Adams Exh. 30, pp. 4-9.

^{45/} The Commission was not advised by RBI of Mr. Parker's previous history of misconduct. Those then-recent stains on Mr. Parker's record were similarly not mentioned in the Disclosure Statement filed in RBI's then-pending bankruptcy, *see* Adams Exh. 18.

(b3) *The August, 1991, 316*

222. On August 14, 1991, RBI submitted a Short Form Assignment Application ("August, 1991, 316") seeking approval of the ownership changes which would result from implementation of the plan of reorganization. Adams Exh. 21. In the August, 1991, 316, RBI expressly asserted that the proposed changes would **NOT** result in any actual transfer of control of RBI, since "stockholders of [RBI] prior to bankruptcy will continue to own more than 50 percent (50%) of [RBI]'s stock after the grant of the present application." *Id.*, p. 8. RBI even provided a chart comparing the before-and-after holdings of RBI's previously-approved shareholders. That chart showed that the following previously-approved RBI shareholders would continue to hold more than 50% of RBI's stock and

would, therefore, continue to wield corporate control:

Name of Shareholder	Percentage Before 316	Interest Held After 316
Henry N. Aurandt	36%	18.71%
Robert A. Denby	10%	4.99%
Sergio Proserpi	4%	3.01%
Jack A. Linton and Nancy A. Linton	2%	0.86%
Irvin Cohen	8%	3.02%
Roger N. Longenecker and L. Carole Longenecker	5%	3.86%
Ralph H. Tietbohl	5%	3.68%
Patricia J. Verbinski	5%	4.02%
Robert H. Clymer	4%	1.49%
Larry A. Rotenberg and Allison A. Rotenberg	4%	1.26%
David E. Mann and Barbara W. Mann	3%	2.5%
Joanne V. Davis	3%	0.88%
Albert R. Boscov	2%	0.81%
John R. Bower, Jr. and Jill L. Bower	2%	2.01%
Edward C. Fischer	2%	3.04%
Bernard R. Gerber	2%	0.86%
Catherine Z. Morrow	2%	1.34%
Donald E. Stoudt and Mary Lu Stoudt	1%	0.34%
TOTAL	100%	56.68%

Adams Exh. 21, pp. 8-9.

223. The August, 1991, 316 was granted in August, 1991, but never consummated.

(b4) *The September, 1991, Meetings; the MSA is terminated and the plan of reorganization nullified by the RBI Board of Directors.*

224. In September, 1991, RBI held shareholder and Board of Directors meetings. Despite repeated requests by Adams for production of documents relating to those meetings, RBI never produced any minutes or records of those meetings. Why? Nevertheless, other documents produced by RBI indicate that, at those meetings, one of RBI's five directors was replaced, and the resulting board -- consisting of Henry Aurandt, Helen Aurandt, Jack Linton, Robert Clymer, and Mr. Parker, *see* Adams Exh. 27, pp. 1-2 -- terminated the MSA and declared the plan of reorganization to be null and void. While Mr. Parker disputed the validity of the election of Mrs. Aurandt and the actions which were taken by the board at that meeting, RBI has made no showing that the September, 1991 meetings were invalid in any respect.

(b5) *The October, 1991 Issuance of Stock by Mr. Parker*

225. Following the September, 1991, termination of the MSA, Mr. Parker refused to go away. Instead, on October 15, 1991, Parker took it upon himself to issue more than 360,000 shares of RBI stock, supposedly pursuant to the plan of reorganization which had been in fact declared null and void by the RBI directors in September, 1991. *E.g.*, Adams Exh. 27, p. 2; Adams Exh. 24; Tr. 799-800.

226. The issuance of shares as of October 15, 1991 was not disclosed to the Commission. Indeed, as recently as July, 1999, RBI continued to affirmatively deny the October, 1991 issuance of shares. In a "Reply to Preliminary Motion of Adams Communications Corporation" submitted to the Presiding Judge on July 29, 1999, in the

instant proceeding, RBI flatly stated that Mr. Parker

had no direct or indirect ownership interest in [RBI] *before* the conclusion of the company's reorganization in *1992*.

* * *

Parker only became a stockholder, with an equity interest (through Partel) of approximately 30%, after the company emerged from Chapter 11 *in 1992*. *At that time, Partel* and numerous other stockholders were added and the outstanding stock in the company went from 50,000 shares to 419,038 shares, requiring long-form approval of the FCC pursuant to an application on FCC Form 315.

RBI "Reply to Preliminary Motion of Adams Communications Corporation", filed July 29, 1999, at 3-4 (emphasis added). The claim that Partel and numerous other shareholders were not added until *after* Commission approval in 1992 was false. RBI's stock register conclusively establishes that Partel and the other "numerous" shareholders were actually added in October, 1991, some six months before the "consummation" which RBI reported to the Commission. Adams Exh. 24. Mr. Parker confirmed that he personally issued the stock in October, 1991. Tr. 799-800. Not until RBI's Opposition, filed on November 19, 1999, did RBI acknowledge that Partel had become a shareholder in October, 1991. ^{46/}

227. RBI's stock register conclusively demonstrates that, as a result of the October, 1991 issuance of stock, the previously-approved shareholders who had been listed

^{46/} See RBI's Opposition to Motion to Enlarge, filed November 19, 1999. In so acknowledging, RBI offered no explanation for its express and explicit representation to the Presiding Judge, in July, 1999, that Parker and Partel had held no ownership interest in RBI prior to March, 1992.

in the August, 1991 316 held less the 50% of RBI's stock. The October, 1991 issuance effected a transfer of control of RBI. The following chart demonstrates this.

Name of Shareholder	Interest Held			
	Percentage Before 316	Percentage Proposed in 316	10/15/91 Stock Issuance Shares Percent	
Henry N. Aurandt	36%	18.71%	23,868	6.56% ^{47/}
Robert A. Denby	10%	4.99%	19,922	5.47%
Sergio Proserpi	4%	3.01%	12,003	3.29% ^{47/}
Jack A. Linton and Nancy A. Linton	2%	0.86%	3,424	0.93% ^{47/}
Irvin Cohen	8%	3.02%	12,067	3.31%
Roger N. Longenecker and L. Carole Longenecker	5%	3.86%	15,413	4.23%
Ralph H. Tietbohl	5%	3.68%	14,683	4.03% ^{47/}
Patricia J. Verbinski	5%	4.02%	16,045	4.41%
Robert H. Clymer	4%	1.49%	5,943	1.63%
Larry A. Rotenberg and Allison A. Rotenberg	4%	1.26%	5,039	1.37% ^{47/}
David E. Mann and Barbara W. Mann	3%	2.5%	9,977	2.74%
Joanne V. Davis	3%	0.88%	3,507	0.96%
Albert R. Boscov	2%	0.81%	3,243	0.89%
John R. Bower, Jr. and Jill L. Bower	2%	2.01%	8,014	2.2%
Edward C. Fischer	2%	3.04%	12,121	3.33%
Bernard R. Gerber	2%	0.86%	3,424	0.93% ^{47/}
Catherine Z. Morrow	2%	1.34%	5,333	1.46%
Donald E. Stoudt and Mary Lu Stoudt	1%	0.34%	1,350	0.37%
TOTAL	100%	56.68%		48.11%

228. RBI never explained its failure to report the October, 1991 stock issuance.

^{47/} The shares of Messrs. Aurandt, Proserpi, Linton, Tietbohl, Rotenberg and Gerber shown in this chart are aggregate holdings, including shares issued to (a) the named individuals and (b) accounts (e.g., retirement or profit-sharing accounts) controlled by or for the benefit of those individuals.

While RBI denied that such a transfer had occurred, its own submissions belied that claim. RBI Exhibit 17 for identification consisted of an elaborate chart purporting to reflect the number of shares and percentages of RBI ownership historically held by RBI's various shareholders. The final row on the first page of this elaborate chart supposedly showed the "% Ownership by Shareholders Previously Approved". The entries in this row under the columns "Shares Issued 10-15-91" and "Post Transfer Report (4-16-92)" are as follows:

Shares Issued 10-15-91	Post Transfer Report 4-16-92
51.6%	52.4%

RBI Exh. 17 for identification. In order to attain those percentage totals, RBI included as a "shareholder previously approved" STV Reading, Inc., which was credited in RBI Exh. 17 for identification as receiving 17,674 shares representing 4.8% of RBI's stock.

229. According to Mr. Parker and RBI, STV Reading, Inc. was a corporation which was controlled by Dr. Aurandt, a previously-approved shareholder, and therefore it was appropriate to include STV Reading, Inc. in the "previously approved" category. Tr. 954-955. RBI claimed that if STV Reading, Inc.'s 4.8% interest were added to the 48.11% aggregate interest issued to previously-approved shareholders, then more than 50% of RBI's newly-issued stock was controlled by previously-approved shareholders and a transfer of control did not occur. *E.g.*, RBI Exh 17 for identification.

230. But if STV Reading, Inc. were *not* "previously-approved", then less than 50% of the newly-issued stock was controlled by non-approved shareholders, and a transfer of control *did* occur.

231. After urging that STV Reading should be treated as a "previously-approved"

party, RBI conceded that STV Reading, Inc. was *not* a "previously-approved" party as of October, 1991. Tr. 1187. ^{48/} Mr. Parker's claim that STV Reading, Inc. was controlled by Dr. Aurandt at the time of the October, 1991 stock issuance is contrary to the documentary evidence and Mr. Parker's own testimony. The minutes of the first RBI shareholder meeting conducted after the October 15, 1991 issuance of shares indicate that STV Reading, Inc. was an active participant in the meeting, with its RBI stock interest voted *by Mr. Parker, who held himself out as President of STV Reading*. See Adams Exh. 13, p. 38. But immediately thereafter the minutes indicate that Dr. Aurandt specifically opposed the meeting. *Id.* More than three months later, Parker as President of STV Reading, Inc. voted its stock at the February 4, 1992 RBI shareholders' meeting, a meeting to which Dr. Aurandt objected and which he refused to attend. See, e.g., Adams Exh. 13, pp. 32, 75-81, 105.

232. Mr. Parker explained this seeming paradox during his testimony. According to Mr. Parker, at the time of the October 30, 1991 RBI shareholders' meeting,

I had the proxies issued to me of 9.9 percent of [STV Reading, Inc.]. At the time I was under the impression that that was 100 percent of the company and I did a resolution in lieu of a Board meeting based on those proxies and

^{48/} After listening to RBI, the Presiding Judge was at one point under the misconception that STV Reading, Inc. had been "previously-approved." But RBI itself was forced to acknowledge the error in the Court's understanding at Tr. 1187:

JUDGE SIPPEL: As I understand it, I think I asked this same question before, but there is a long form someplace in the agency's records that shows that Reading Broadcasting prior to August 14, 1991, had submitted a long form application which had the name STV Reading, Inc. on it.

MR. COLE: That's incorrect, Your Honor.

JUDGE SIPPEL: That's not correct?

MR. SIFERS: That's not correct.

elected myself as president [of STV Reading, Inc.].

Tr. 970. While Mr. Parker attempted to suggest that he did not really control, or believe that he controlled, STV Reading, Inc. as of October 30, 1991, the following exchange occurred:

THE COURT: But you believed at that point in time [*i.e.*, as of the October 30, 1991 RBI shareholders' meeting] that you had effective voting control [of STV Reading, Inc.].

MR. PARKER: That is correct.

Tr. 977-978. After hearing Mr. Parker's explanation, the Presiding Judge summarized that explanation as follows:

You thought you were going to vote yourself as president and be able to vote those shares of STV for purposes of the business of Reading, Inc., you certainly thought that you had the voting control at that time [*i.e.*, as of October 30, 1991].

Tr. 987. ^{49/}

233. The STV Reading, Inc. stock interest in RBI was important because, to the extent that it was controlled by Mr. Parker, the stock interests of previously-approved RBI shareholders fell below 50% and a long-form application would have been required. It is

^{49/} According to Mr. Parker, his belief that he controlled STV Reading, Inc. was erroneous. *E.g.*, Tr. 978. However, Mr. Parker did not acknowledge that error until a year later when, in connection with a "Settlement Agreement", he retroactively resigned as president of STV Reading, Inc. See Adams Exh. 27, p. 26; Tr. 973. In attempting to minimize his role in STV Reading, Inc., Mr. Parker engaged in the following bizarre assertion: "I resigned in [the Settlement Agreement] as president [of STV Reading, Inc.], because I never was president." Tr. 973. But if he had never really been president, how could he and why should he resign from that position? In any event, any retroactive effect of the Settlement Agreement does not and cannot change the facts that (a) on and as of October 30, 1991, Mr. Parker clearly believed and acted as if he controlled STV Reading, Inc. and (b) he continued to so believe and so act for a year thereafter.

unlikely that the situation occurred accidentally. As the Presiding Judge observed of Mr. Parker, "It's hard to conceive that by happenstance you ended up with ownership of equity of just under 50 percent." Tr. 742. The Court asked Mr. Parker whether it was by design that Mr. Parker supposedly never acquired more than 50% of RBI's stock. Tr. 741. Mr. Parker initially claimed that it was "a tough question to answer" because, had the 50% mark been reached, a long-form application would have been required. *Id.* The Presiding Judge then noted that "that might be a reason enough not to do it then." *Id.* Ultimately, under further questioning from the Presiding Judge, Mr. Parker testified that he had never intended to acquire a 50% or greater ownership interest in RBI. Tr. 743. To the extent that he was thus aware of the stock ownership percentages outstanding, Mr. Parker must have been aware that control of the STV Reading, Inc. interest in RBI made an important difference for Commission purposes.

234. Again, the evidence demonstrates conclusively that Mr. Parker asserted control of the STV Reading, Inc. interest in RBI in October, 1991, exercised that control at shareholder meetings in October, 1991 and February, 1991, and did not relinquish it until late 1992, pursuant to a settlement agreement which simply rubber-stamped, after the fact, Mr. Parker's acquisition of control of RBI.

(b6) *The October 30, 1991, Meetings*

235. Having issued RBI stock in October, 1991, Mr. Parker called a meeting of the owners of the newly-issued stock. Adams Exh. 25. That meeting was held on October 30, 1991. The minutes of the meeting reveal that previously-approved shareholders Dr. Aurandt and Mr. Linton expressly objected to the holding of the meeting and declined to participate.

Adams Exh. 13, p. 38. An attorney representing RBI's original Directors, who included Messrs. Aurandt and Linton, asserted that the stock issuance by Mr. Parker in October, 1991 was null and void because the MSA had been terminated based on malfeasance by Mr. Parker. Adams Exh. 13, p. 39. Notwithstanding the objections of those previously-approved shareholders, Mr. Parker conducted the meeting, cast the votes of Partel and STV Reading by himself, removed the previous board of directors, nominated a new slate of directors, all of whom were elected, and held himself out as the person in charge. Adams Exh. 13, pp. 38-73.

236. Immediately after the shareholders meeting, the newly-elected directors met. ^{50/} The new directors immediately began to exercise control over the corporation, removing all former officers including Linton and electing Mr. Parker as President and, in effect, the sole corporate officer.

(b7) *The November 13, 1991, 315 application*

237. Two weeks after his October 30, 1991, coup, Mr. Parker caused a long-form Form 315 transfer of control application ("November, 1991, 315") to be filed. Adams Exh. 52. All three portions -- transferor, licensee, and transferee -- were signed by Mr. Parker. Adams Exh. 52, pp. 16-18. The application contained not even a scintilla of a

^{50/} The minutes of this Directors' meeting were reviewed by undersigned counsel for Adams in October, 1999, according to notes made during that review. However, pursuant to the direction of the Presiding Judge, that review was allowed in lieu of production of the minutes -- in other words, Adams was allowed to see the minutes, but was not allowed to make any copies. While RBI has since been ordered to produce various corporate minutes, the minutes of this October 30, 1991 Directors' meeting were never produced. As a result, they do not appear in the record.

hint that RBI's shareholders, officers and directors had changed at all since August, 1991. ^{51/} To the contrary, the November, 1991, 315 specifically advised the Commission that the ownership changes which had been proposed (and approved) in the August, 1991 316 had not been consummated. Adams Exh. 52, p. 29.

238. The only "explanation" for the filing of the November, 1991, 315 appeared in the second paragraph of Exhibit 2, which read in relevant part as follows:

. . . Because the stock ownership of [RBI], the proposed transferee, will be different from the stock ownership of [RBI] prior to bankruptcy, the instant application is being filed on FCC Form 315, the Long Form application. ^{*/}

^{*/} Please note that on August 14, 1991, [RBI], as debtor-in-possession, filed an application on FCC Form 316 requesting the transfer of control of WTVE(TV) to [RBI] (FCC File No. BTCT-910814KE). The Commission granted the application on August 27, 1991. Because of the circumstances surrounding the stock ownership of [RBI], as explained in Exhibit 4 to the instant application, the parties did not consummate the transaction.

Adams Exh. 52, pp. 24-25. Exhibit 4 referred to in the footnote to Exhibit 2 read, in its entirety, as follows:

Four of the proposed stockholders of [RBI], Harvey L. Massey, Paul Pavloff, Stella Pavloff and Alfred W. Busby, have sued Dr. Henry Aurandt, a present and proposed stockholder of [RBI], in U.S. District Court for the Eastern District of Pennsylvania. On July 31, 1991, a judgment was entered in favor of Mr. Massey, Mr. Pavloff, Ms. Pavloff and Mr. Busby against Dr. Aurandt, and the court garnished Dr. Aurandt's [RBI] stock to satisfy the judgment. If Dr. Aurandt's [RBI] stock is used to pay the judgment, his

^{51/} As noted above, given the opportunity to explain his failure to say anything at all about RBI's new officers and directors in the November, 1991 long-form application -- officers and directors who had been elected by his nomination and vote during a tempestuous meeting which had occurred only two weeks prior to the preparation of the November, 1991 Long Form application -- Mr. Parker attributed that failure to "inadvertence". Tr. 815.

stock, which will represent 13.98% of the outstanding stock if the instant application is approved, will be distributed to the four stockholders referenced above.

Adams Exh. 52, p. 31. These "explanation[s]" failed to mention that Messrs. Massey and Busby and the Pavloffs had *already* been issued stock by Mr. Parker in October, 1991, the previous month, and had even voted as RBI shareholders (by proxies given to Mr. Parker) at the October 30, 1991, meeting. See Adams Exh. 13, p. 38.

239. In fact, the garnishment mentioned in the exhibit appears to have been, at most, an after-the-fact justification for the filing of the Long Form application, since the stock which Parker actually distributed in October, 1991, independent of the garnishment matter, effectuated a transfer of control. Reference to the garnishment appears to have been nothing more than a smokescreen, designed to create the impression that some intervening circumstance had necessitated the filing of a Long Form application. ^{52/}

240. By February, 1992, the November, 1991 315 had still not been granted. On February 7, 1992, RBI filed an amendment to the application. In her transmittal letter,

^{52/} The garnishment of Dr. Aurandt's stock had been in the works for several months prior to October, 1991. According to the minutes of a July 31, 1991 RBI directors' meeting, Mr. Parker was aware that questions existed concerning the "status" of Dr. Aurandt's stock and that that status was "unresolved". See Adams Exh. 15, p. 73.

Further, the October, 1991 notice of garnishment at most notified RBI that an attachment had been issued in favor of the judgment creditors and that the shares to which Aurandt would be entitled under the plan of reorganization *might* ultimately be utilized to satisfy the judgment. See RBI Exh. 15. That notice thus left the status of Dr. Aurandt's stock in the same "unresolved" status that it had been in in July, 1991. The garnishment notice imposed no affirmative obligation on RBI; rather, it simply put RBI on notice of the garnishment and enjoined RBI from disposing of the shares in question. The very limited effect of the garnishment notice is demonstrated by the fact that in April, 1992 -- six months after the garnishment notice -- RBI reported to the Commission that the contested bloc of stock *still* had not been issued. RBI Exh. 11 (unpaginated April, 1992 Ownership Report).

RBI's counsel offered further "explanation" as to why RBI had filed a long-form Form 315 application:

In addition, if the foregoing application is granted, the stock ownership of [RBI] will be different from the stock ownership of [RBI] prior to bankruptcy. As referenced in [RBI]'s application, in order to adequately finance the corporation, [RBI] will issue additional shares of stock to reflect the addition of several new shareholders. Consequently, the above-referenced application was filed on FCC Form 315, the Long Form application.

Adams Exh. 30, p. 1. But the application as originally filed (and as quoted above) claimed that the use of a Long Form application supposedly arose from the garnishment, not from any need to "adequately finance the corporation". Adams Exh. 52, pp. 24-25. The February 7, 1992, transmittal letter underscores RBI's awareness of the need to obtain Commission approval *before* any transfer of control, and it illustrates RBI's efforts to convince the Commission that no such transfer had already occurred or would occur prior to such approval.

(b8) *The February, 1992, shareholder meeting*

241. On February 4, 1992, Mr. Parker convened a meeting of RBI's October, 1991, shareholders. Adams Exh. 13, pp. 75-121. Objections to that meeting were again interposed by counsel on behalf of some original RBI principals, but those objections were brushed aside by Mr. Parker, who presided over the meeting. *Id.* During the meeting, the directors who had been "elected" at the October 30, 1991, meeting (upon Mr. Parker's nomination) were "re-elected". *Id.* This meeting occurred three days before RBI's letter, Adams Exh. 30, to the Commission in which RBI created the misimpression that the ownership and governance of RBI were still as they had been in August, 1991.

(b9) *The consummation letter and the April, 1992 ownership report*

242. On April 10, 1992, counsel for RBI filed a letter, referencing the November, 1991, 315, which notified the Commission that the transfer of control "was consummated on March 12, 1992." Adams Exh. 32. That letter contained no reference at all to Mr. Parker's issuance of stock in October, 1991.

243. On April 16, 1992, RBI filed an Ownership Report (FCC Form 323) to report the consummation of the transfer of control authorized with the grant of the November, 1991 315. RBI Exh. 11 (unpaginated April, 1992 Ownership Report). That Ownership Report was signed by Mr. Parker. *Id.* It contained no reference to the Partel MSA. According to the Report, the directors of RBI were still Messrs. Aurandt, Linton, Clymer, Fischer and Parker, and Mr. Linton was still the Secretary, notwithstanding the October 30, 1991 meeting where they had been ousted, and the February 4, 1992 meeting where their ouster was reaffirmed. Mr. Parker had presided over both of those meetings. The stock distribution described in the table of shareholders in the Ownership Report corresponds, with only very minor exceptions, to the stock distribution which resulted from Parker's October 15, 1991, issuance of Share Certificate Nos. 1A through 50A. RBI Exh. 11; Adams Exh. 24. However, the Ownership Report contains no reference to the fact that the stock was issued in October, 1991.

(b10) *Events subsequent to April, 1992*

244. In April, 1993, RBI filed a letter signed by Mr. Parker certifying that the information set forth in the April 16, 1992, Ownership Report remained accurate, even though the Parker-led board, first "elected" in October, 1991, continued to control the corporation and that fact had never been reported to the Commission. RBI Exh. 11 (unpaginated April, 1993 Letter and Ownership Certification).

245. In March, 1994, in connection with its application for renewal of license, RBI filed an updated Ownership Report in which for the first time it identified its directors as Parker, Clymer, McCracken, Rose, Cohen, *i.e.*, the directors "elected" in October, 1991, plus two new directors. RBI Exh. 11 (unpaginated March, 1994 Ownership Report).

(6) *INVESTMENT OF STATION RESOURCES TO IMPROVE SERVICE TO THE PUBLIC*

246. In his written testimony, Mr. Parker alluded to the fact that RBI was "in reorganization under Chapter 11 of the Bankruptcy Code from 1986 to 1991". RBI Exh. 5, p. 1. He provided summary revenue, expense and net loss figures for RBI for each of the years included in the license term. *Id.* He then stated that

the reorganization in 1991 and the company's improved financial condition in 1992-94 allowed us to move from a situation where we were focused on developing a workable plan to come out of bankruptcy (while in the meantime keeping the company afloat and keeping the company on the air) to a situation where we could focus more energy and resources on the station's public service initiatives.

Id.

247. Mr. Parker's testimony suggests that the station's financial situation had impaired the station's ability to address its "public service initiatives" prior to its

"reorganization in 1991", but that that situation improved through the remainder of the license term, thus permitting greater "public service initiatives". But the record does not reflect that RBI made any investments at all to ensure quality public service to the viewers and communities in its service area. To the contrary, the evidence establishes that RBI, primarily at the express direction of Mr. Parker, made a determined effort *not* to make any such investments.

248. Mr. Bendetti testified repeatedly that Mr. Parker directed the station's staff to reduce or limit its efforts to produce public service programming since those efforts tended to cost more money because they involved occasional out-of-studio productions or even in-studio productions which required a station "crew". According to Mr. Bendetti,

our public service efforts slowed down. I remember the reason at that time was we were told to concentrate more on paid projects. That we should be working on projects that are making money for the television station and that we shouldn't be assembling crews together to go outside on remotes or in the station, in the studio to tape shows.

* * *

And most of the public service efforts that we were doing at the time, Mike Parker did not want us to take those on. I vividly remember him saying that he doesn't want anybody spending money or time working on things that aren't making money for the television station.

Tr. 1674-1679.

Mike Parker told us that we were to cut down on our efforts -- cut down on our efforts, stop spending any type of money and man hours or people hours on working on public service programs.

Tr. 1683. Concerning the station-produced PSA "In Touch", Mr. Bendetti stated that

Mr. Parker asked us to stop doing those for reasons that had to do with us having to pull together a crew in order to be able to go in and tape these things. We had to have a couple of camera operators, we had to have a director.

Tr. 1678. The record indicates that only 16 "In Touch" PSA's, each three minutes long, were broadcast, all during the first half of 1993. RBI Exh. 8, Tab Q, pp. 24, 41, 43, 44, 110; RBI Exh. 8, Tab R, pp. 122-131, 137. This discouragement of public service activities prevailed at the station at least from 1990-1993. Tr. 1680.

249. And even when the station's staff found ways to attempt to increase PSA production in 1993, such efforts were undertaken despite the fact that Mr. Parker had told the staff to "cut down on" such activities. Tr. 1681. Out-of-studio production efforts for public service programming were eliminated, and the staff was subject to an unwritten policy, throughout the license term, that any public service announcements should be produced in-studio, with all production scheduled to occur on a single day so as to avoid having to use extra crews. Tr. 1708. According to Mr. Bendetti, this policy was intended to "keep costs down." *Id.* ^{53/}

250. The policy did not vary over the license term based on the station's financial situation. Mr. Bendetti, whose tenure at the station began before the beginning of the license

^{53/} During cross-examination, Mr. Bendetti was asked about a number of projects which involved out-of-studio effort by the station's staff. Mr. Bendetti acknowledged that those projects were undertaken in whole or in part away from the station's studios. Tr. 1764-1768. However, he explained that the station's policy of not undertaking out-of-studio public service productions did not apply if the station was being paid for the production. Tr. 1768-1769. Similarly, the station produced a video of a charitable classic car show, the Concours d'Elegance, but the station sold copies of the videotape. Tr. 1770. The only out-of-station public service programming which he could recall which was not being paid for were PSA's for the Humane Society, which were taped across the street from the station. Tr. 1769, 1766-1767.

term and extended beyond its end, testified that "[t]he financial situation was always unstable, ever since I can remember." Tr. 1711. And any efforts made by the station's staff to increase non-home shopping programming was attributable *not* to a desire to increase service to the audience, but rather to make the station more attractive to cable systems which might otherwise have chosen to carry satellite-fed home shopping programming rather than RBI's over-the-air signal. Tr. 1681-1682, 1711. ^{54/}

251. The evidence also demonstrates that, during the license term, the station was operated with "antiquated" equipment, Tr. 1691, including a transmitter that was subject to repeated outages. Tr. 1153-1172; Adams Exh. 43. Mr. Bendetti indicated that the station did not acquire any new equipment. Tr. 1725. No evidence indicates that the station sought to obtain new equipment which would improve either the technical quality and stability of the station's signal or the ability of the station's staff to produce any kind of public service programming during the license term.

252. The evidence also demonstrates that the station's staff during the term had been reduced to "skeletal" levels. Adams Exh. 16, p. 5; Tr. 562-563. Mr. Bendetti testified that the station's staff was "small" and that that had an adverse effect on the station's ability to public service programming. Tr. 1666, 1691. The station's Annual Employment Reports for the license term disclose that the station had 14 full-time employees in 1989, 15 full-time employees in 1990, 16 full-time employees in 1991, 9 full-time employees in 1992, 8 full-

^{54/} The staff's efforts to increase "local" programming were made because "we were trying to get on the cable system. Because if we could get on that cable system, then we would have so many more subscribers, so many more viewers that could see our station." Tr. 1711.

time employees in 1993 and 7 full-time employees in 1994. Adams Exh. 38 for identification. ^{55/}

253. The financial information included in Mr. Parker's written testimony indicates that RBI suffered "net losses" as follows during the license term:

Year	"Net Loss"
1989	\$443,575
1990	126,793
1991	487,556
1992	38,807
1993	12,764
1994	29,999

RBI Exh. 5, p. 1. Adams proffered as Adams Exhibits 33-37 copies of annual financial reports for RBI for 1989, 1990, 1991, 1992 and 1994. ^{56/} According to those reports, during

^{55/} Adams Exhibit 38 for identification consists of the Annual Employment Report filed by Station WTVE(TV) for 1991. At the time that that exhibit was marked for identification, counsel for Adams advised the Court that he intended to proffer a series of Annual Employment Reports covering the entire license term. Tr. 725-726. The Presiding Judge sustained an objection to the receipt into evidence of these reports. Tr. 727; *see also Order*, FCC 00M-27, released March 31, 2000, rejecting Adams's Motion for Leave to Lodge Certain Documents in the Docket of This Proceeding. Since the reports themselves were filed with the Commission, are generally available in the Commission's files, and were presumably prepared and filed in the ordinary course of business, they are reliable. Indeed, RBI did not oppose the receipt into evidence of the station's employment statistics. Tr. 725. Adams requests that Adams Exhibit 38 for identification be received into evidence or, in the alternative, that official notice of the contents of the reports contained therein be taken.

^{56/} An annual financial report for 1993 was not available. Tr. 719. However, the information for 1993 was included in the financial report for 1994. *See Adams Exh. 37* for identification. The Presiding Judge rejected these exhibits, Tr. 723-724; *see also Order*, FCC 00M-27, released March 31, 2000. Adams respectfully requests that the rejection of these exhibits be reconsidered and that they be received into evidence. As discussed in the text above, including in particular the proposed conclusions of law, the Commission's comparative renewal policy ascribes importance to whether or not the

(continued...)

those years RBI incurred the following expenses to Partel which, it bears repeating, was nothing more than a corporate embodiment of Mr. Parker, its sole shareholder, Tr. 900: Year

Total Partel Expenses ^{57/}

1989	\$ 7,356
1990	48,660
1991	143,931
1992	108,491
1993	112,873
1994	108,032

Adams Exhibits 33-37 for identification.

254. These figures confirm Mr. Parker's reference to the "improved financial condition" of RBI in 1992-1994. In fact, they underscore that statement, since the Partel expenses in each of those three years exceeded RBI's "net losses" by tens of thousands of dollars. In other words, but for the payments to Partel during those three years, RBI was operating at a profit, not a loss.

255. And yet, during those years the programming staff remained under Mr. Parker's directive to cut down on public service activities. *See* Paragraph 52, above.

^{56/}(...continued)

incumbent seeking a renewal expectancy makes investments to ensure quality service. *See, e.g., Central Florida Enterprises, Inc. v. FCC*, 683 F.2d 503, 507 (D.C. Cir. 1982), *citing Cowles Broadcasting, Inc.*, 86 FCC2d 993, 1013 (1981). The proffered financial reports are plainly relevant to that aspect of the comparative renewal analysis.

^{57/} The expenses listed here are taken from the "expenses" or "operating expenses" listings of each of RBI's annual financial reports. Those listings each include, under the general heading of "Partel Expenses", separate line items for (a) "travel" and "meals", in the 1989 report; (b) "travel", "meals" and "occupancy expenses", in the 1990 report; (c) "travel and entertainment", "other expenses", and "consulting fees", in the 1991-1994 reports. It is conceivable that expenses included under other headings may have represented, in whole or in part, expenses to be paid to Partel and/or Mr. Parker. However, the only expenses shown above are taken from the "Partel" expense entries.

And during those years, the station operated with a "skeletal" full-time staff, approximately half as large as the full-time staff the station employed in 1991. *See* Paragraph 252, above. And during those years, the staff was forced to used "antiquated", "old" equipment which broke down repeatedly during the license term. *See* Paragraph 251, above.

256. And during those years (1992-1994), Mr. Parker -- who had directed the staff to "cut down" on public service activities, Tr. 1681, who "didn't want to be bothered" by discussions about public service programming, Tr. 1718-1719 -- was awarded, through Partel, almost \$330,000.